

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5626 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SADABEN JESINGHBHAI MATHURBHAIMALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5626 of 2004
MR NK MAJMUDAR for Petitioner No. 1
MR SP MAJMUDAR for Petitioner No. 1
MR GHORI AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 29/07/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

Articles 226 of the Constitution of India, praying to quash and set aside the order of detention, passed against the petitioner on 30-12-2003 and seeking direction to the respondents to set the petitioner-detenu at liberty forthwith.

2. Mr. N.K.Majmudar, the learned advocate appearing for the petitioner has submitted that the petitioner was detained by an order dated 30-12-2003, passed by the respondent No.2 i.e. Commissioner of Police, Baroda City, Baroda, with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, in exercise of powers conferred under Section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (" the Act" for short). The petitioner was ordered to be detained in Sabarmati Central Jail, Ahmedabad and she has been supplied with the grounds of detention dated 30-12-2003 along with the documents. He has further submitted that, in all, six prohibition cases have been alleged against the petitioner. However, from the said cases, it obviously appears that the value of the quantity itself alleged to have been seized is very small for which it could hardly be said proper to pass an order of detention. He has further submitted that the names of the witnesses whose statements are relied upon against the petitioner detenu are not disclosed to the petitioner and, therefore, the petitioner detenu cannot make an effective representation. He has further submitted that the respondents-authorities have taken into consideration the shelter of Section 9 (2) of the Act without any application of mind as to whether in fact, such exercise would abridge the fundamental rights of the petitioner enshrined under Article 22 (5) of the Constitution of India of making an effective representation against the said particulars of the statements of witnesses or would really serve the purpose of claiming privilege.

3. Mr. Majmudar has further submitted that sub Section (3) of Section 3 of the Act provides that when an order of detention is made under this Section by the authorized officer, the said officer shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars, as in his opinion, have a bearing on the matter. He has submitted that the detaining authority has failed to comply with the statutory provisions and, thus, the detenu's continued detention has become illegal. It is submitted that the representation was made by the petitioner much earlier, but the same has not been considered and hence, the right

of the petitioner enshrined under Article 22 (5) of the Constitution of India is violated. It is submitted that the petitioner has also made a representation to the Advisory Board, however, the same was not considered by the State Government independently. It is submitted that the representation was considered after long delay and that too without any reason and hence, it was violative of fundamental right of the petitioner guaranteed by Article 22 (5) of the Constitution of India.

4. Mr. Majmudar has further submitted that it was alleged in the grounds of detention that the statements of the witnesses were recorded by the police. However, the names, addresses and other particulars of the said witnesses have not been supplied to the detenu. It is further stated that the said persons are fictitious persons and they do not exist. The police has got up the said statements in order to get an order of detention passed against the detenu. He has further submitted that either the detaining authority or any other higher officer has not personally verified the said statements and there is no good reason for not supplying the names, addresses and other particulars of such persons. He further submitted that the action of the detaining authority in not supplying the names, addresses and other particulars of the said witnesses is, therefore, mala fide and violative of Article 14 of the Constitution of India. He has further submitted that from the contents of the aforesaid statements of witnesses, identity of all the witnesses is not disclosed. Thus, while claiming privilege under sub section (2) of Section 9 of the act, the detaining authority has not applied mind as to whether by not giving such particulars, the purpose of claiming privilege would be served or not. He has therefore, submitted that the impugned order was passed without any application of mind. He has further submitted that the statements of the witnesses recorded by the detaining authority are nothing but parrot-like chanting. He has further submitted that there is nothing to show that by the alleged activities of the petitioner, public order was ever disturbed or likely to be disturbed. He has further submitted that preventive detention law cannot be exercised where a criminal conduct, cannot be easily prevented, checked or thwarted and it would not provide a ground sufficient for detention under the prevention laws. He has further submitted that if every infringement of law having a penal sanction by itself is a ground for detention, danger looms large that the normal criminal trials and criminal courts set up for administering justice will be substituted by detention laws often described as lawless

law. He has therefore, submitted that the alleged offence of the detenu concern only with law and order situation and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated.

5. Mr. Majmudar has further submitted that the incidents narrated relate to prohibition cases and the quantities involved are also very small. Thus, on the basis of such statements, the subjective satisfaction arrived at by the detaining authority is vitiated. Mr. Majmudar has further submitted that the offences mentioned in the grounds of detention are not in any way related with the breach of public order. Otherwise also there is no material by which it can be said that public order was ever disturbed by the alleged activities of the detenu as the cases are related to Prohibition Offences.

6. Mr. Majmudar has further submitted that the last case registered against the detenu is dated 15-11-2003 which is C.R. No.1700 of 2003 wherein illicit Wash of 350 liters valued at Rs.700/- was seized. However, the impugned order of detention was passed only on 30-12-2003 i.e. about a month-and-a-half after the last incident alleged against the detenu. He has therefore, submitted that there is unreasonable delay in passing the impugned order of detention.

7. In support of the submissions that the impugned order deserves to be quashed and set aside only on the ground of delay, Mr. Majmudar has relied on the decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City, reported in 1997 (1) G.L.H. 381, wherein the Court has taken the view that though the conduct of the petitioner was found to be of serious nature, having regard to the long gap between the occurrence and the order of detention, the continued detention of the petitioner was not desirable. The Court has further observed that what is required by law is that the delay must be explained by the detaining authority. In the present case, the detaining authority has not filed any affidavit explaining the delay of 1 1/2 months in passing the order of detention against the petitioner. Mr. Majmudar has further relied on the decision of this Court in the case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh v. Commissioner of Police, Ahmedabad and Ors. reported in 1997 (1) G.L.H. 1017 wherein this Court has held that " When the life and liberty of the citizens are put to jeopardy without trial and the detention orders are passed, the approach at no stage should be casual. Higher the power greater should be the restraint and caution and particularly in the

matters of detention where on one side the constitutional rights are at stake, the legal obligation must also be discharged with great sense of responsibility even if the satisfaction to be derived is a subjective satisfaction such subjective satisfaction has to be based on objective facts. If the objective facts are missing for the purpose of coming to subjective satisfaction, in absence of objective facts the satisfaction leading to an order without due and proper application of mind may render the order to be unsustainable."

8. Mr. Majmudar has further relied on the decision in the case of Bharatbhai Ratansing Ninana v. State of Gujarat & Ors. reported in 2002 (1) G.L.R. page 107, wherein also the delay was not explained by the detaining authority and the Court has observed that "This casual, mechanical and callous approach of the detaining authority in P.A.S.A. matters, would certainly render this Act ineffective in fact and substance."

9. Mr. Majmudar has further relied on a decision of this Court in the case of Miyana Bai Amina Suleman v. State of Gujarat & Ors. reported in 42 (4) G.L.R. page 3728 wherein also the delay of about 6 months in passing of the impugned order from the date of last offence registered against the petitioner was not explained and as a result of which, the petition was allowed and the order of detention was quashed and set aside.

10. As far as non-furnishing of names and addresses of the witnesses are concerned, Mr. Majmudar has relied on the decision of the Division Bench of this Court in the case of Kajalben G. Sindhi v. Commissioner of Police, Ahmedabad & Ors. reported in 2000 (1) G.L.H. 320 wherein it was held that withholding of names and addresses of the witnesses by the detaining authority caused prejudice to the detenu as she was deprived of a right to make effective representation which is violative of Article 22 (5) of the Constitution and the order of detention was quashed and set aside

11. On the basis of the aforesaid facts and the authorities relied upon by him, Mr. Majmudar has strongly urged that the order of detention is absolutely illegal, unwarranted, violative of fundamental rights of the petitioner and hence, it is required to be quashed and set aside. He has also submitted that even the detenues who are detained subsequent to the petitioner, have already been released by this Court and hence, there is no reason for the detaining authority to detain the petitioner any more as the maximum period of detention is

12 months, whereas the petitioner is in jail for the last about 7 months. He has therefore, submitted that the petitioner be released immediately.

12. Mr. Ghori, the learned A.G.P. appearing for the respondents-authorities have on the other hand supported the order of detention. He has submitted that the case of the petitioner stands altogether on a different footing and there is no single isolated incident or offence, but there are series of offences and the petitioner is habitual offender and hence, strict view is required to be taken against the petitioner. He has further submitted that the delay of 1 1/2 months cannot be considered a substantial delay which would affect the order of detention. He has further submitted that the authorities relied upon by the petitioner are not applicable as the delay in those cases were more than 5 to 6 months. he has further submitted that non-disclosure of names and addresses of the witnesses would not adversely affect the case of the petitioner. He has therefore, submitted that the petitioner should not be ordered to be released and the petition be dismissed.

13. I have heard the learned advocates appearing for the respective parties at length. I have also gone through the order passed by the detaining authority as well as documentary evidence which are produced on the record of this petition. I have also considered the authorities cited before me. I am of the view that though numerically there are six offences and the period covered is from 24-5-2003 to 15-11-2003, these are all small offences and the quantity involved is also very small. While passing the impugned order, the detaining authority has merely enumerated the offences and given the gist of statements of the witnesses without disclosing their identity. The privilege claimed under Section 9 (2) of the Act would certainly affect the effective representation of the petitioner and as held by the Division Bench of this Court, the same would go to the root of the matter. As far as the delay is concerned, the first offence was alleged to have been taken place in May 2003, while the impugned order was passed in December, 2003 and hence the authorities have waited for 7 months from the date of first offence and even 1 1/2 months from the date of last offence. No explanation has been tendered as to why immediate step was not taken against the petitioner despite their belief that the activities of the petitioner was disturbing the public order. No affidavit in reply has been filed by the detaining authority in response to the present

petition. From the order it appears to the Court that while arriving at the subjective satisfaction, the detaining authority has not objectively taken into consideration the facts leading to his conclusion and the order is therefore, passed without any application of mind which vitiate the impugned order of detention.

14. Taking overall view of the matter and considering the period of 7 months for which the petitioner is in the jail, this Court is of the view that there is no justifiable reason to detain the petitioner any more.

15. In the above view of the matter, the petition is allowed. The order of detention dated 30-12-2003 is quashed and set aside. The detenu, Sadaben Jesingbhai Mathurbhai Mali is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(K.A.Puj, J.)

*mithabhai